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United States of America

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA)	Criminal Case No. 09cr0572JAH
Plaintiff,)	STIPULATION OF FACT
v.)	
JOSE HERNANDEZ,)	
Defendant.)	

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, United States of America, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caleb E. Mason, Assistant United States Attorney, and defendant JOSE HERNANDEZ ("Defendant"), by and through and with the advice and consent of counsel, Michael Crowley, Esq., that:

1. The material witness, RAMON RIVERA-AVILA:
 - a. Is an alien with no lawful right to enter or remain in the United States;
 - b. Entered or attempted to enter the United States illegally on or about February 2, 2009;
 - c. Was found in a vehicle driven by Defendant at the San Clemente, California, Border Patrol checkpoint;
 - d. Was paying money or having money paid on her behalf to be smuggled illegally into the United States.
2. The above-named material witness, RAMON RIVERA-AVILA, may be released and remanded immediately to the Department of Homeland Security for return to her country of origin.
3. Defendant has signed a plea agreement in the above-captioned case, agreeing to plead guilty to Count 2 of the Indictment filed in that case.

3. If Defendant ultimately does not plead guilty to Count 2 of the Indictment in the above-captioned case, for any reason, or thereafter withdraws his guilty plea, Defendant agrees that in any proceeding, including but not limited to, motion hearings, trial, sentencing, or appeal, that:

a. The stipulated facts set forth in Paragraph 1 shall be admitted as substantive evidence.

b. The United States may elicit testimony from arresting agents regarding any statements made by the material witness provided in discovery to Defendant, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of an unavailable witness; and,

c. To the extent that testimonial hearsay statements are not admissible against a defendant unless the defendant confronted and cross-examined the witness whom made the testimonial hearsay statements, defendant waives the right to confront and cross-examine the material witness in this case.

4. By signing this stipulation, Defendant certifies that Defendant has read it. Defendant certifies further that Defendant has discussed the terms of this joint stipulation with defense counsel and fully understands its meaning and effect.

Based on the foregoing, the parties jointly move the stipulation into evidence.

Respectfully Submitted,

KAREN P. HEWITT

United States Attorney

Caleb E. Mason
Assistant United States Attorney

Michael Crowley, Esq.
Attorney for Defendant

Jose Hernandez, Defendant

4/14/09
DATED

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